

Harold Derschowitz (x263)

From: Harold Derschowitz (x263)
Sent: Tuesday, June 24, 2008 4:15 PM
To: 'Deborah MartinNorcross'; 'humoh@umohlaw.com'
Subject: Mann v. Plus One Fitness, et al
Attachments: #1038848-v1-DOCS-
MANN_letter_to_Hon_Buchwald_and_cc_d_parties_re_outstanding_discovery.DOC

Counselors: Attached hereto is a letter I just sent, via facsimile, to Judge Buchwald regarding the discovery status of the within matter, and my request that the Court schedule a Conference regarding same.

Sincerely,

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June 24, 2008

Via Fax: (212) 805-7927

Hon. Naomi Reice Buchwald
United States District Judge
United States District Court
for the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Jordan Mann v. Plus One Fitness, et al
Civil Action No.: 07 CV 5691 (NRB)
Our File No.: 163-8001

Dear Madam Justice:

Please be advised that we represent the defendants, Board of Managers of Trump World Tower Condominium s/h/i Trump World Towers, and John Henriques, in the above-entitled action.

We are joining in the request of counsel for co-defendants, Plus One Holdings, Inc. and Jamie MacDonald, in their request for a discovery conference with the Court and for permission to file a motion to compel discovery and for sanctions, as referenced in the June 23, 2008 letter of Deborah Martin Norcross, Esq., to the Court.

Despite the efforts of defense counsel to obtain plaintiff's compliance with her discovery obligations, including but not limited to a Rule 37.3 Conference conducted with her attorneys on June 11, 2008, significant discovery remains outstanding, despite the Court having previously extended its discovery deadline in this matter, at plaintiff's request, from May 30, 2008 to June 30, 2008.

Although the plaintiff's depositions were previously scheduled for June 9 and 11, 2008, and again for June 24 and 30, 2008, said depositions were unilaterally cancelled at the last minute on both occasions by plaintiff's counsel, and only following contact initiated by the respective defense counsel seeking confirmation that same were in fact going forward.

Moreover, despite our office having forwarded deficiency letters to plaintiff's counsel on May 30, 2008, and again on June 20, 2008, plaintiff still has failed to fully respond to our clients'

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First Notice to Produce dated January 7, 2008, and has entirely failed to respond to our clients' Second Set of Interrogatories dated May 30, 2008.

Lastly, despite prior indications from plaintiff's counsel that his client had not been able to obtain employment since being terminated from her position with co-defendant, Plus One Holdings, Inc., and in contradiction of plaintiff's prior discovery responses with regard thereto, we were most recently advised by plaintiff's counsel on June 20, 2008, in response to a request seeking confirmation of the plaintiff's attendance at her scheduled deposition of June 24, 2008, that "plaintiff will be unable to appear for her deposition next week" and that plaintiff's counsel would be filing a motion for a discovery extension with the Court. It was not until the afternoon of June 23, 2008, that we were apprised that plaintiff is unable to attend said deposition because she is presently employed in Guam, as set forth in plaintiff's counsel's letter to the Court dated June 23, 2008, which was accompanied by an affidavit of the plaintiff. This was the *first* time that the defendants had been apprised that plaintiff was in fact employed in any capacity since the date of her termination from the co-defendant Plus One Holdings, Inc., which not only impacts upon the plaintiff's claims for damages in the instant action, but upon the veracity of her prior discovery responses. In this regard, we strenuously object to the plaintiff's request to have his client be produced for deposition purposes, by telephone or video conference.

In view of the foregoing, we would request that the Court schedule a discovery conference and grant the defendants permission to file a motion to compel and for sanctions.

We thank the Court for its attention to the within matter.

Respectfully yours,


Harold J. Derschowitz
Of Counsel (9910)

HJD:imr

cc:

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Hon. Deborah Freeman, Magistrate Judge

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